IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 36468 of 2007(N)

PETITIONER:

SRI. GEORGE ANTO,
PROPRIETOR, MODERN WOOD INDUSTRIES,
NORTHERN BAZAR, CHEVOOR, TRICHUR DISTRICT.

BY ADV. SRI.E.P.GOVINDAN

RESPONDENTS:
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1. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
THOLPETTY.

2. THE SECRETARY, TAXES DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON 14/12/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 36468 OF 2007 N
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Dated this the 14th day of December, 2007

J U D G M E N T

The writ petition is filed praying for quashing Ext.P2 to the extend it directs the petitioner to pay security deposit and for directing release of the goods and the lorry detained. It is seen from Ext.P2 that a consignment of 57 logs of Beety Round logs transported by the petitioner has been detained. The irregularity noticed is that there was difference in the value shown in the delivery note and the invoice issued by the Karnataka Forest Department. On this basis, evasion of tax was suspected and the petitioner has been called upon to furnish security deposit of Rs.49,858/- and advance tax of Rs.53,375/-. It is challenging this notice that the petitioner has filed this writ petition.

2. Petitioner submits that he had purchased the timber from the Central Timber Depot, Madikeri under the Karnataka Forest Department and Ext.P3 is the purchase bill. It is also stated that the timber was being transported on the strength of Ext.P4 pass issued by the Karnataka Forest Department and also Form 15 delivery notice, which is Ext.P5 in this writ petition. It is

submitted by the petitioner that in the delivery note, due to a clerical mistake, value was shown as Rs.2,37,000/- as against Rs.3,15,650/-. It is stated that this was only a mistake and as the petitioner is liable to pay advance tax at the rate as ordered by the Commissioner of Commercial Taxes in the circular issued, there is no question of any evasion of duty.

3. On the merits, these contentions are premature in as much as the matter requires to be enquired into by the officer concerned and only on appreciation of the material available, the correctness of this can be ascertained. On the facts, this is yet another case where an enquiry is necessary and therefore I am not inclined to interfere with the reasons that lead to the detention of the goods and the vehicle.

4. Irrespective of that, the issue that I need to consider at this stage is only whether the goods need be detained any further. Petitioner submits that he is a registered dealer and Ext.P1 is his registration certificate. Petitioner has also offered to pay advance tax that is specified in Ext.P3 notice of detention

itself. Since the controversy is only with regard to the security deposit which is asked to be made, I do not see any reason to continue detention of the goods in the circumstances of this case.

5. Accordingly, I direct that without prejudice to the right of the respondents to continue the enquiry and adjudication, the goods and the truck detained as per Ext.P2, shall be released to the petitioner on his remitting the advance tax specified therein and also furnishing a bond without sureties for the security amount.

Writ petition is disposed of.

ANTONY DOMINIC, JUDGE.

Rp